In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.2317 of 2003.

Date of decision:29.11.2006.

Krishan Kumar

...Appellant.

Versus

Sneh Lata

...Respondent.

...

Coram: Hon 'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.R.N.Moudgil Advocate for the appellant.

Mr.S.P.Sharma Advocate for the respondent.

...

Judgment.

S. N. Aggarwal, J.

Sneh Lata respondent instituted custody proceedings of her minor son Harpreet Singh. Her version was that her marriage had taken place with Krishan Kumar appellant in the year 1989. Harpreet Singh minor child was born to her on 29.1.1991. However, the appellant had tortured her and she was made to leave his house. The child was kept by the appellant with him. She had initiated maintenance proceedings under Section 125 Cr.P.C. but those proceedings were got dismissed as withdrawn because of a compromise dated 12.2.1992. She was again

turned out of the house on 18.8.1997 and the minor child Harpreet Singh was forcibly kept by the appellant. Hence, the petition.

On the other hand, the version of the appellant was that Sneh Lata was never married with him nor they had sexual relations with each other nor any child was born from this alleged wedlock. However, Harpreet Singh was the minor son of the respondent who was adopted by the appellant and was living with him. Another objection taken was that the minor child was living with him in the jurisdiction of Judicial Court at Anandpur Sahib and,therefore, the Judicial Court at Chandigarh did not have the jurisdiction., Hence, dismissal of the petition was prayed.

Issues were framed.

The parties led the evidence.

The learned trial Court held on issue No.1 that Sneh Lata being mother of minor child Harpreet Singh was entitled to the custody of her minor son. On jurisdiction, it was held that the respondent was living in village Palsora under the jurisdiction of Civil Court at Chandigarh and,therefore, the Judicial Court at Chandigarh has the jurisdiction to decide the petition under Section 25 of the Guardians and Wards Act, 1890. Accordingly, the petition was accepted by the learned trial Court vide impugned judgment dated 23.4.2003.

Hence, the present appeal.

The first submission of learned counsel for the appellant was that the Judicial Courts at Chandigarh did not have jurisdiction to

decide these custody proceedings as the minor child for whose custody these proceedings were instituted was admittedly living with the appellant under the jurisdiction of Judicial Courts at Anandpur Sahib. A reference was made to Section 9(1) of the Guardians and Wards Act,1890 which determines the jurisdiction of the Judicial Courts regarding custody proceedings. It reads as under:-

> "9(1) Court having jurisdiction to entertain application.-(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides."

Admittedly, the child is living with the appellant who is residing in village Kotla, Tehsil Anandpur Sahib. The settled law is that the judgment by a Court which did not have jurisdiction has no legal existence. This point was also discussed by this Court in an unreported judgment titled **Harnek Singh and another Versus Balbir Singh,** F.A.O.No.5375 of 2002 decided on 11.9.2006. It is, therefore, held that the Judicial Court at Chandigarh did not have the jurisdiction to decide these custody proceedings when the minor child who was subject matter of the custody proceedings was admittedly living in the jurisdiction of Judicial Court at Anandpur Sahib. Accordingly, the impugned judgment dated 23.4.2003 is set aside.

In the interest of justice and as per law laid down by the Hon'ble Supreme Court in **Pooja Bahadur vs. Uday Bahadur,** AIR

1999 SC 1741, the petition filed by the respondent for the custody of minor child Harpreet Singh along with the entire record of that case is transferred to the Court of District Judge, Rupnagar for further proceedings. The District Judge, Chandigarh shall transfer the relevant file to the District Judge, Rupnagar. The parties may appear before the learned District Judge, Rupnagar on 20.12.2006 who will entrust this case to the competent Court of law having jurisdiction. The said Court shall grant one opportunity each to the parties to lead further evidence besides the evidence already produced on the file by the parties.

Since the custody proceedings are pending in the learned trial Court since 1988, therefore, these proceedings shall be decided by the learned trial Court expeditiously and preferably within a period of six months from the date of appearance of parties before the learned trial Court.

Disposed of.

Dasti copies of this order be given to the counsel for the parties on payment of usual charges.

November 29,2006 (S. N. Aggarwal)
Jaggi Judge